



June 29, 2010

Ms. Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW, TW-A325  
Washington, D.C. 20554

***Ex Parte Notice:***

***In the Matter of the Petition for Rulemaking to Amend the Commission's Rules Governing Retransmission Consent, MB Docket No. 10-71***

Dear Ms. Dortch:

On behalf of Canby Telcom, the National Telecommunications Cooperative Association is filing this notice of ex parte contact with the Secretary's office.

On Monday, June 28, 2010, Keith Galitz, president and general manager of Canby Telcom sent via email the attached letter and attachments to Ms. Eloise Gore, Associate Bureau Chief, Mass Media Bureau, regarding the above referenced matter.

Pursuant to Section 1.1206 of the Commission's rules, a copy of this letter and letter sent to Ms. Eloise Gore are being filed via ECFS with your office. If you have any questions, please do not hesitate to contact me at (703) 351-2020.

Sincerely,

/s/ Jill Canfield  
Jill Canfield  
Senior Regulatory Counsel  
Legal and Industry

JC:rhb  
Attachments

cc: Eloise Gore  
Nancy Murphy  
David Konczal  
Ron Parver  
Christopher Hickman

June 28, 2010

Ms. Eloise Gore  
Associate Bureau Chief  
Mass Media Bureau  
Federal Communications Commission  
[Eloise.Gore@FCC.Gov](mailto:Eloise.Gore@FCC.Gov)

*Via email*

**Re: *In the Matter of the Petition for Rulemaking to Amend the Commission's Rules Governing Retransmission Consent, MB Docket No. 10-71***

Dear Ms. Gore:

On Monday, June 14, 2010, I met with you to urge the Commission to consider a rulemaking to amend the rules governing retransmission consent agreements. During that meeting, you requested additional information and data regarding the difficulties that Canby Telcom has had while negotiating agreements with the local broadcasters.

Canby Telcom is a full service rural telecommunications provider. Canby Telcom is a small telephone cooperative, located in Canby, Oregon. The company entered the IPTV marketplace in October 2005. Canby Telcom serves an 84 square mile area and has approximately 9600 access lines, 5500 high speed internet customers, and 2000 IPTV customers.

Canby Telcom, like other small video providers, must include the programming offered by the major networks in our channel line-up in order to attract and retain subscribers. Commission rules are such that we must obtain this programming from local broadcasters, which in some cases are owned by "national" companies. The local broadcasters are fully aware that their programming is "must have" and force us into retransmission negotiations in order to obtain it. The negotiation is very one sided with the broadcasters holding all of the power, able to demand any price in a take it or leave it offer. The broadcasters hold the ultimate bargaining chip in that they know that a video provider will lose subscribers if network affiliated programming is not available. The threat of pulling programming is not an empty threat.

In January 2009, Canby Telcom was forced to turn down its signal of the local Portland ABC affiliate, KATU and KATU HD, owned and operated by Fisher Communications, due to our inability to reach a fair and reasonable agreement on the cost for carriage.

Fisher proposed that we pay them in excess of 40% higher than we paid other local broadcast channels with greater market penetration, or viewership, than the other three major national

affiliates with which we had agreements. Fisher rejected all counter offers, refusing to consider anything price other than the one they dictated, and we were forced to pull the channel from our lineup. We sent a letter to our customers informing them of the situation (Attachment “A”). It was clear to Canby Telcom that Fisher considered us and our subscribers a low priority and did not care if the station went dark. One customer sent an email to Fisher pleading with them to settle the contract dispute with Canby Telecom, and received a response, about Fisher’s negotiations with DISH (Attachment “B”). And, yet another Canby Customer received no response (Attachment “C”). It was not until after we sent a letter to all Congressional and Senate offices, and one of them called Fisher’s corporate offices to inquire about the situation that they finally returned our calls we were able to negotiate a deal with Fisher to carry the local ABC affiliate (Attachment “D”).

Based on our discussions with you, it is my understanding that the broadcaster’s claim that the retransmission rate increases are “fair.” Canby disagrees. Our “Economy TV” programming package offered to our subscribers is a basic offering consisting of local broadcast stations and a limited number of other channels. Our “Essentials TV” programming package is a larger channel line-up of 110 stations, including everything in the Economy TV package. The rate Canby pays for the programming offered on our Economy line-up increased a whopping 51.75% from 2008 to 2009 due to retransmission consent cost increases, while the line-up of our broader Essentials line-up increased merely 8.88% (Attachment “E”). This shows that the increased cost of broadcasting programming is far outpacing the increased cost of any other programming Canby offers.

The situation with the broadcasters is unsustainable. The broadcasters control the “negotiating” process. Small video operators cannot offer the volume of subscribers that the large cable operators can and have no leverage. Broadcasters take advantage of their superior bargaining position to the detriment of community based providers and their consumers.

Therefore, I urge the Commission to begin a rulemaking proceeding to reform the retransmission process. The Commission should seek comment on: 1) permitting small video providers to seek local programming from outside their Designated Market Areas, and 2) providing small and mid-size video providers access to “most favored nation” pricing for programming which allows them to request the same prices and conditions from any other existing retransmission agreements a broadcaster has entered into with other video providers to prevent discrimination against smaller providers. After all, programming costs are the same whether provided to a large national cable provider or a small one. It is not a cost that changes because of the volume of subscribers. Small cable/IPTV operators and our consumers are injured as a result of the current retransmission rules and programmer’s pricing practices. In addition, the Commission should implement rules that provide for interim carriage of signals and a dispute resolution process in the event of an impasse.

To be clear, I am not suggesting that the Commission completely eliminate its retransmission consent rules. Canby Telcom is ready and willing to pay a fair price for programming. But the current rules are unfairly skewed in favor of the broadcasters and have created an untenable situation for smaller video providers. The Commission must consider reforming the rules.

I appreciate this opportunity to provide you information and welcome any additional questions you may have. Please do not hesitate to contact me.

Sincerely,

/s/ Keith Galitz

Keith Galitz,  
President and General Manager  
Canby Telcom

Attachments

KATU Announcement

Attachment  
"A"

We are disappointed that Fisher Communications, owner and operator of ABC's local broadcast station KATU and KATU HD, has not been willing to negotiate a reasonable cost to continue carriage of their programming on Canby Telcom's digital television service.

According to Keith Galitz, Canby Telcom, President and General manager, "as a local business, owned by our customers, we have pledged from the outset of our negotiations to reach a fair deal that will minimize the negative impact on our customers and owners for their cost of entertainment and local programming. However, we can not accept the latest demand by KATU for payment at the level they require. The rate proposed is at a level of compensation in excess of 40% higher than other local broadcast channels with which we have agreements. And, we have reached agreements with all other broadcasters. In these economic times, we can not agree to this kind of cost increase and, to date KATU has rejected all of our counter offers."

Local broadcast channels such as KATU can be accessed - free over the air - to anyone with an antenna, and yet the same programming will now be at a per subscriber cost to the television operator.

We regret the fact that we have not yet been able to reach an agreement, but we are committed to continuing our negotiations to reach a reasonable compromise. In the meantime, we have been instructed that we must discontinue broadcasting KATU and KATU's HD signal. We regret the inconvenience this will cause our customers.

## Click, Kesty

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From: Dale Wade [dale@gsls.biz]  
Sent: Friday, January 09, 2009 4:35 PM  
To: Click, Kesty  
Subject: FW: OREGON SERVICE

*Attachment*  
*"B"*

-----Original Message-----

From: CEO Colleen Brown [mailto:colleen\_brown@fsci.com]  
Sent: Friday, January 09, 2009 1:14 PM  
To: Dale Wade  
Subject: Re: OREGON SERVICE

Thank you for your email.

We want to thank you for caring enough about our programming to take the time to write. Please know that we attempted to extend the expiration of our current contract with DISH to work out the terms of a new agreement, but they rejected our proposal. We're obviously disappointed by their decision as it is you who is hurt the most.

We know that you don't really care whose fault this is, you just want to be able to watch your favorite programs and local news. But we thought you might like to know how this works. DISH pays a small amount of your monthly fee to every network or local station they carry. Please know that despite DISH's claim, our request is for a modest increase and is still considerably less than the amount they pay for less popular program networks. In fact, we have preliminarily agreed on the rate, but other issues are preventing a deal from being finalized.

While I can't go into greater detail, you should know that we believe DISH Network has violated the terms of our existing agreement. They have failed to pay us for one of our stations for the past two years! I would expect that if I were a DISH subscriber and I didn't pay my bill for two years, they would shut off my service and seek my back pay.

Please know that we are continuing our negotiations with DISH Network and doing all we can to reach a settlement. Thank you again for your email and we regret this has caused you any inconvenience.

Sincerely,

Colleen Brown  
President and Chief Executive Officer  
Fisher Communications, Inc.

Text of original message below:

MESSAGE TO GENERAL MANAGER

Settle your contract dispute with Canby Telcom so that I can watch channel 2!! Your 40% rate increase is unreasonable and your viewership is the one that is suffering. Why would advertisers pay for TV Spots if during this period?

Dale Wade



ATTACHMENT  
"C"  
Galitz, Keith <kgalitz@canbytel.com>

## RE: Canby Telcom

Jeff Terrill <jeffterill@canby.com>  
To: John Tamerlano <gm@katu.com>

Fri, Jan 9, 2009 at 11:06 AM

John, I'm surprise I've not seen a response from you concerning my January 6 email.

Can you give me clarification about what you are doing to correct the unreasonable price structure you've levied against my cable TV provider?

Frankly, pricing services 40% above your competitors is a recipe for failure in my business. But then, I deal with the forest products industry who won't allow such blatant, unconcealed advantage to be taken of them!

I look forward to your speedy reply.

Best regards,

Jeff

Experience: What you get when you don't get what you want!

**From:** Jeff Terrill [mailto:[jeffterill@canby.com](mailto:jeffterill@canby.com)]  
**Sent:** Tuesday, January 06, 2009 5:00 PM  
**To:** 'John Tamerlano'  
**Subject:** Canby Telcom  
**Importance:** High

Hello John.

Being a new(er) subscriber to Canby Telcom's service, I was surprised to see they dropped KATU today. But upon further investigation, you can imagine my dismay when I learned why. What the hell is THAT about? I can use my attic-mounted HD antenna and get your station for free – yet you insist on raising Canby Telcom's

rates by 40%!

The insanity of what you are suggesting is beyond comprehension! So far as I know, Fisher/KATU holds no monopoly on broadcasting, or do they? What on earth is the reasoning behind stonewalling my cable provider as you have?

You know what they say; a satisfied client will tell perhaps one other person about the great service they've received, but a disgruntled client will tell (10) people. Trust me, John, if this thing doesn't right itself soon, I'll make certain everyone I know hears about the "deal" you've given Canby Telcom!

Sincerely,

Jeff Terrill

(503) 535-9343





*faster higher farther*

ATTACHMENT  
"D"

January 6, 2009

The Honorable Ron Wyden  
223 Dirksen Senate Office Building  
Washington, DC 20510-3703

RE: Retransmission Consent- KATU- Portland- Fisher Communications

Dear Senator Wyden:

Today, we were forced to turn down our signal of the local Portland ABC affiliate due to our inability to reach a fair and reasonable agreement on the cost for carriage. As you know, we are small telephone cooperative, located in Canby, Oregon. We decided to enter the IPTV marketplace in 2005, so that our customers would have additional choice for their TV viewing options. And, in addition offer competitive pricing.

It is my understanding that Dish Networks also failed to reach an agreement with the owner of KATU, and they turned down that signal over a month ago. And, yesterday, another telephone cooperative in the State, Clear Creek Telephone and Television also turned down the signal after failing to reach agreement.

Canby Telcom is more than willing to pay a fair and reasonable rate for local programming, and have reached agreements with all other broadcasters with no disruption to service, but we refuse to increase our customers' TV bills because multi-billion dollar corporations are able to take advantage of a broken, monopolistic marketplace in which we have no leverage. We had hoped to resolve this issue with no disruption to service, but our efforts at negotiation have failed as to their price demands. And, I suspect across this nation many other small cable companies, or telephone companies that offer TV via their phone lines, have had the same experience.

Many broadcast groups, like Fisher Communications, are publicly held companies, and every quarter boast to their investors about the unbelievable increases they are seeing in retransmission revenue. This found money doesn't grow on trees; it's taken from the pockets of independent telephone and cable operators and their subscribers. The marketplace has reached its breaking point and we, along with cable and TV operators across the country, are taking a stand.

Unfortunately, due to outdated federal regulations, the owners of local programming are forcing higher and higher fees for the carriage of local channels or requiring us to carry channels that we or our customers may not want.

Attached is the announcement we made today regarding the action we have been required to take. Is there anything you or other Senators can do to assist us with these issues?

Sincerely,



Keith G. Galitz  
President & General Manager

*faster higher farther*

[www.canbytel.com](http://www.canbytel.com)

ATTACHMENT  
"E"

2008 -2009 Programmer Cost Comparisons

Rate for 2008 Economy TV = \$1.5175

Rate for 2009 Economy TV = \$2.1155

\*\*51.75% Increase (\$0.598)

Economy is Canby Telcom's basic package Tier and mainly contains the national networks- those under Retransmission Consent

Rate for 2008 Essentials TV = \$30.1917

Rate for 2009 Essentials TV = \$32.8740

\*Includes economy channels into equation

\*\*8.88% Increase (or approximately \$ 2.68)

Essentials package contains all of our Channels, except Premium channels such as Showtime, HBO and the other premium movie channels.